

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

—X—

STEPHEN DRAGO, Individually and as  
Acting Chair and President of  
"Neighborhoods Against Cell Towers"

08 CIV 6356 (SCR)

Plaintiffs,

- against -

JOHN S. GARMENT, Chairman, and STEPHEN  
A. ALEXANDER, JOHN E. DURANTE,  
CASIMIRO V. CIBELLI, ARNOLD BERNSTEIN,  
MICHAEL F. QUINN, and JOHN J. IORIS,  
as Members of the Planning Board of  
the City of White Plains; THE CITY OF  
WHITE PLAINS, New York, and METROPCS  
NEW YORK, LLC,

NOTICE OF MOTION  
TO DISMISS PLAINTIFFS'  
COMPLAINT PURSUANT TO  
FRCP 12(b) (6)

Defendants.

—X—

COUNSELOR

PLEASE TAKE NOTICE that upon the affidavit of Arthur Gutekunst  
sworn to the 5<sup>th</sup> day of September, 2008, the accompanying Memorandum of  
Law and the complaint herein, the defendants, John S. Garment, Chairman,  
and Stephen A. Alexander, John E. Durante, Casimiro V. Cibelli, Arnold  
Bernstein, Michael F. Quinn, and John J. Ioris, as Members of the  
Planning Board of the City of White Plains and the City of White Plains,  
New York, ("The City Defendants") hereby move this Court on October 7,  
2008 at 10:00 AM or soon thereafter as counsel may be heard at the  
United States Courthouse, 300 Quarropas Street, Courtroom 621, White  
Plains, New York 10601, for an order granting the City Defendants'

motion to dismiss Plaintiffs' Complaint pursuant to the Federal Rules of Civil Procedure Rule 12(b)(6) for Plaintiffs' failure to state a claim upon which relief can be granted by this Court, and for such other and further relief as this court deems just and proper.

Dated: White Plains, New York  
September 5, 2008

Yours, etc.  
EDWARD P. DUNPHY  
Corporation Counsel

By:

  
Arthur Gutekunst

Sr. Ass't Corporation Counsel  
Attorney for City of White Plains  
Defendants  
Municipal Building  
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**CERTIFICATE OF SERVICE**

JOHN S. GARMENT, Chairman, and STEPHEN  
A. ALEXANDER, JOHN E. DURANTE,  
CASIMIRO V. CIBELLI, ARNOLD BERNSTEIN,  
MICHAEL F. QUINN, and JOHN J. IORIS,  
as Members of the Planning Board of  
the City of White Plains; THE CITY OF  
WHITE PLAINS, New York, and METROPCS  
NEW YORK, LLC,

Defendants.

—X—

I hereby certify that on September 5, 2008, copies of the foregoing:

**NOTICE OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT, TOGETHER WITH ALL  
PAPERS IN SUPPORT THEREOF**

were filed through the Electronic Case Filing (E.C.F.) procedure under  
the United States District Court of Southern New York's local rules and  
served upon all parties of record by email (through E.C.F.) as follows:

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certiorari@earthlink.net

Dated: White Plains, New York  
September 5, 2008

EDWARD P. DUNPHY  
Corporation Counsel

By:   
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